Supreme Court, U.S.
FILED

09-1064 MAR 3 - 2010

IN THE OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

AGWU NWOKE,
Petitioner,

v.

VILLAGE OF BOLINGBROOK,
BOLINGBROOK POLICE DEPARTMENT,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Agwu Nwoke
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QUESTIONS PRESENTED

1. Does Nwoke's Complaint state a cause of action under 42 U.S.C. § 1983?

2. Does Nwoke's Complaint state a cause of action under the Fourth Amendment of the United States Constitution?

3. Was the Village of Bolingbrook rightfully named as a defendant in the Complaint?

4. Was the Bolingbrook Police Department rightfully named as a defendant in the Complaint?

LIST OF ALL THE PARTIES TO THE PROCEEDING

The parties to the proceeding in the Seventh Circuit of the Court of Appeals, were:

(a) Petitioner, Agwu Nwoke, a private person; and

(b) Respondents, the Village of Bolingbrook in Illinois, and the Bolingbrook Police Department.

Agwu Nwoke represented himself. The Village of Bolingbrook and the Bolingbrook Police Department were represented by Craig G. Penrose of Tressler LLP, a law firm, located at 233 South Wacker Drive, 22nd Floor, Chicago, IL 60606-6399.

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JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Seventh Circuit was entered on December 10, 2009. This Court has jurisdiction over the petition pursuant to U.S. Supreme Court rule 13.1.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

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STATEMENT OF THE CASE

On December 12, 2008, a Bolingbrook police officer (Mitchell) made a traffic stop on a minivan driven by the Plaintiff, Nwoke. The police officer claimed that Nwoke ran a red light at an intersection. Nwoke informed the police officer that Nwoke did not run a red light. The officer went ahead and served Nwoke with a traffic ticket. On the back of the ticket, it was stated that if the motorist pled not guilty by mail, the motorist was not required to appear in traffic court on the appearance date. A new trial date would have to be set by the clerk of the traffic court. Nwoke pled not guilty by mail. However, on the appearance date, an ex parte judgment was entered against Nwoke for failing to appear in court. Nwoke filed a motion to vacate the ex parte judgment. The motion was granted and a new trial date was set. On the trial date, the case was called up. Nwoke was present, but the police officer did not show up. The case was dismissed.

On May 5, 2009, Nwoke filed a Complaint against the Village of Bolingbrook and the Bolingbrook Police Department. In the Complaint, Nwoke asserted that the police officer wrote the ticket in order to raise revenue for the Village. Nwoke also claimed that the officer violated Nwoke's civil rights under the tort of malicious use of process. Nwoke asserted that the Village of Bolingbrook and the Bolingbrook Police Department were liable under the doctrine of *respondeat superior*. The Village and the Police Department were also liable because the Village gained financially from the proceeds of traffic tickets issued on innocent motorists.

On May 28, 2009, the counsel for the Defendants filed a motion to dismiss the Plaintiff's Complaint. On June 4, 2009, the district court dismissed the Complaint. On June 9, 2009, the Plaintiff filed a notice of appeal. Between July and September 2009, the Plaintiff and the Defendants filed their briefs at the Court of Appeals for the Seventh Circuit. On December 10, 2009, the Court of Appeals affirmed the judgment of the Federal District Court.

ARGUMENT

Before Nwoke presents his argument, he would wish to clarify an issue raised in the ruling of the Seventh Circuit of the Court of Appeals. In the ruling, the three-judge panel of the Seventh Circuit stated:

> "The district court dismissed the suit in a court order that does not provide reasons, and thus violates Circuit Rule 50. The suit may have been dismissed for failure to prosecute (Nwoke failed to appear at a scheduled hearing) or on the merits; if the latter, the district court's reasons for thinking the complaint defective were not stated."

The following statement in quotation marks, "[t]he suit may have been dismissed for failure to prosecute (Nwoke failed to appear at a scheduled hearing)" is misleading, to say the least. What happened was that the Federal District Court fixed a status hearing for both the plaintiff and the defense for June 25, 2009. Prior to that June 25 hearing, the defense counsel, on May 28, 2009, filed a motion to dismiss. The defense counsel chose a date, June 04, 2009, to present the motion. The motion was that of the defense counsel. It was the obligation of the defense counsel to present his motion. It was not the obligation of the Plaintiff to present the defense counsel's motion. The date of the motion was chosen by the defense counsel and not the Federal District Court. On June 04, 2009, the defense counsel presented his motion to dismiss; the Federal District Court dismissed Nwoke's Complaint, and ruled that the June 25 status hearing date was moot.

Nwoke would now proceed to the main body of the argument.

Nwoke's Complaint states a second cause of action. The Bolingbrook Police Department and the Village of Bolingbrook violated Nwoke's Fourth Amendment rights. The Federal District Court has jurisdiction over this cause of action.

> Under the Fourth Amendment of the U.S. constitution, "the rights of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation,

and particularly describing the place to be searched, and the person or things to be seized."

A police officer has a right to make a traffic stop and check a motorist's driver's license, vehicle registration and insurance. If, however, a police officer stops an innocent motorist and writes an illegal traffic ticket, the officer is seizing the person of the motorist for the extra time it takes the police officer to write the ticket and serve the ticket on the motorist. The fourth amendment of the U.S. Constitution grants citizens the right to be secure in their persons against unreasonable seizures.

At the point and time that a police officer serves a motorist with a traffic ticket, the officer does not swear any oath that the officer observed the motorist commit a traffic violation. The officer has to justify seizing the motorist during the traffic stop, by testifying under oath in court on the trial date. Officer Mitchell did not swear any oath before a judge to show that Officer Mitchell observed Nwoke commit a traffic violation. Officer Mitchell skipped court rather than commit perjury.

In a usual traffic stop for a traffic violation, a police officer stops a motorist who commits a traffic violation. The officer writes a traffic ticket and serves the motorist with the ticket. If the motorist contests the ticket, a trial date is set. On the trial date, the officer appears in court to testify under oath that the police officer witnessed the motorist commit a traffic violation. The officer does not have to win the case, but the officer has to demonstrate before the court that there was probable cause a traffic violation was committed.

In the case, *Village of Bolingbrook v. Nwoke*, an entirely different scenario unfolded. Officer Mitchell served a traffic ticket on Nwoke. The officer knew fully well that Nwoke did not commit a traffic violation. The motive of the officer was to raise revenue for the village. When the officer realized that Nwoke was willing to contest the case in traffic court, Officer Mitchell skipped court. Officer Mitchell would rather be absent from the court than risk committing perjury before a judge.

An ex parte judgment is usually entered against a motorist who fails to appear in court to contest a traffic ticket, irrespective of whether the motorist committed the traffic offense in the first place. Officer Mitchell exploits the situation as explained in the preceding sentence and keeps writing as many traffic tickets as he possibly can.

On page 7 of the Defendants' motion to dismiss, the defense counsel argued that the Village of Bolingbrook should not have been named as a defendant in the case because the Village was not directly involved in the actions of the police officer. On page 6 of the motion to dismiss, the defense counsel also argued that the Bolingbrook Police Department should not have been named as a defendant in the case because the Police Department is not an independent body. These two lines of argument are flawed. Police Officer Mitchell was out in the streets raising money for the Village of Bolingbrook. The officer was not raising the money for himself. When the police officer stopped Nwoke to serve Nwoke the traffic ticket, the officer was driving a Bolingbrook police squad car. The officer was wearing a Bolingbrook police uniform. The officer did not provide Nwoke with the officer's full names. The only information that Nwoke had about Officer Mitchell was what was written on the traffic ticket: a first name and a police identification number. The officer did not appear in court to testify in the case. Nwoke was not given the opportunity to confront the officer in court. The traffic case, *Village of Bolingbrook v. Nwoke*, was between the Village of Bolingbrook and Nwoke. The traffic case was not between Officer Mitchell and Nwoke. The Bolingbrook Police Department sent out Officer Mitchell into the streets to raise money for the Village. The Police Department gave Officer Mitchell a traffic ticket quota to meet.

The Village of Bolingbrook smiles to the bank after receiving a large portion of the proceeds from phony traffic tickets. However, when a litigant sues the Village for the phony tickets, the Village's counsel argues that the Village was not directly involved in issuing the tickets. This line of argument is analogous to a situation where a receiver of stolen goods is sued for facilitating the theft of the goods. The fence hires a defense attorney who argues that the fence was not directly involved in the theft of the goods.

42 U.S.C. § 1983 provides a remedy against "any person" who, under color of law deprives another of any rights, privileges, or immunities secured by the Constitution and laws.

> Law.com dictionary defines color of law as "the appearance of an act being performed based upon legal right or enforcement of a statute, when in reality no such right exists. An outstanding example is found in the civil rights acts which penalize law enforcement officers for violating civil

rights by making arrests 'under color of law' of peaceful protesters or to disrupt voter registration. It could also apply to phony traffic arrests in order to raise revenue from fines or extort payoffs to forget the traffic ticket".

In the judgment of the three-judge panel of the Seventh Circuit, the panel ruled that the Federal District Court Chicago, had no jurisdiction over malicious prosecution cases in view of the fact that Illinois law provides remedies for that tort. However, the Seventh Circuit failed to rule that Nwoke's Complaint stated other causes of action which are actionable in the federal district court. In *Newsome v. McCabe,* 256 F.3d 747 (7th Cir. 2001), the appellate court ruled that even though malicious prosecution as a sole cause of action precluded the federal district court from having jurisdiction over the case, Newsome did have a "due process claim" which was actionable in federal court. The "due process clause" was not the basis of the district court's order allowing Newsome's case to proceed. The appellate court went ahead to rule that even though Newsome's preferred theory was malicious prosecution, the appellate court "may affirm a decision on any ground that the record supports". As a result, Newsome's case against John McCabe and Raymond McNally was allowed to proceed in the federal district court.

Wherefore, for the foregoing reasons, the Plaintiff prays the Supreme Court to reverse the judgment of the Seventh Circuit of the Court of Appeals.

Respectfully submitted,

s/ A. Nwoke
Agwu Nwoke
(Petitioner)

522 Alcott lane
Bolingbrook, IL 60440

Phone: 630-679-1567
Date: March 02, 2010

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PLAINTIFF'S COMPLAINT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AGWU NWOKE,
(Plaintiff),

09 CV 2764
Judge Kocoras
Magistrate Judge Mabon
Received May 05, 2009

vs.

VILLAGE OF BOLINGBROOK,
BOLINGBROOK POLICE DEPARTMENT,
(Defendants).

COMPLAINT

A

STATEMENTS OF FACT

1. On December 12, 2008, the plaintiff (hereafter referred to as Nwoke) was driving a minivan, heading north on Schmidt Road, Bolingbrook. The minivan was moving at a speed of about 25 miles per hour. As Nwoke approached the Schmidt Road/Lily Cache Lane intersection, Nwoke stayed in the left turn lane and activated the left turn signal. At about 15 yards before the intersection, the traffic light turned from green to yellow. Nwoke then proceeded into the intersection while the traffic light was yellow. At that point, there was a vehicle heading south on Schmidt Road. Nwoke waited for the vehicle traveling south on Schmidt to go by, after which

Nwoke made a left turn and headed west on Lily Cache Lane. There was no sign on the left turn arrow that read: "make a left turn on green arrow only." At a distance of about 750 yards beyond the intersection on westbound Lily Cache Lane, Nwoke observed and heard a police siren behind Nwoke's minivan. Nwoke immediately pulled over, and the police car stopped a few yards behind Nwoke's vehicle. After a couple of minutes, a Bolingbrook police officer (identification # 1172) hereafter referred to as Mitchell, approached Nwoke's vehicle. Nwoke asked the officer what the problem was. The officer said that Nwoke ran a red light. Nwoke told the officer that Nwoke did not run a red light. The officer then demanded to see Nwoke's driver's license and proof of insurance. Nwoke handed over the documents to the officer and the officer went back to the police vehicle with the documents. After a while, the officer returned to Nwoke's vehicle, handed the documents back to Nwoke and served Nwoke with a traffic ticket. Nwoke signed the ticket and then drove off, after the officer indicated that Nwoke could leave. The ticket (number 2545266) stated that Nwoke ran a red light. On the yellow copy of the ticket, it was also stated that Nwoke was required to pay a fine of $55 before the court appearance date of January 21, 2009, or appear in court on that day.

2. Paragraph 2 of the back side of the yellow copy of the ticket stated: "If you wish to plead 'NOT GUILTY', complete the form entitled 'Avoid Multiple Court Appearances' on the top half, of the back side, of the blue copy and follow those instructions".

3. On December 15, 2008, Nwoke completed and sent the blue copy of the form to the Clerk of the Will County Circuit Court. Nwoke pled not guilty on the form. The blue form stated: "A new appearance date will be set and you will be notified of the location, time and date of trial. Do not come to the court until you are notified . When you are notified, you should come to court prepared for trial and bring any witnesses you may have."

4. The Clerk of the Will County Court did not set a new appearance date nor did the Clerk set a date for trial.

5. On January 26, 2009, the Clerk sent Nwoke a letter indicating that an ex parte judgment had been entered against Nwoke for failing to appear in court on the return date. The judgment was in the amount of $175. Delinquency amounts to be added to any unpaid fees were as follows: 5% after 30 days, 10% after 60 days, 15% after 90 days and then 30%. Failure to satisfy the judgment by 3/12/2009 would result in a notice of failure being sent to the Secretary of State which might affect the driving privileges of the driver until the judgment was satisfied.

6. On February 5, 2009, Nwoke drove from Bolingbrook to the Will County Court Joliet, in very cold weather, and filed a motion for the Traffic Court to vacate the ex parte judgment. Nwoke paid a mandatory fee of $30.00 to the clerk of the Will County Court before the motion could be filed.

7. On February 11, 2009, the Traffic Court granted the motion and vacated the ex parte judgment. A trial date for the traffic case was set for March 11, 2009. On March 11, 2009, at the Bolingbrook Traffic Court, the case, *Village of Bolingbrook vs. Agwu Nwoke* was called up. Nwoke was present in the court room. However, the Bolingbrook police officer (Mitchell) did not appear in court. The Traffic Court judge dismissed the case.

B

ALLEGATIONS

8. Plaintiff Nwoke alleges that police officer Mitchell served the traffic ticket on Nwoke, not because the officer observed Nwoke run a red light, but the officer served the ticket in order to raise revenue for the Village of Bolingbrook and the Bolingbrook Police Department.

9. There was no probable cause to believe that Nwoke ran a red light on Schmidt Road/Lily Cache Lane, Bolingbrook on December 12, 2008.

10. A police officer has a right to make a traffic stop on a motorist. The law obligates the motorist to stop and provide the officer with the motorist's car registration, driver's license and proof of insurance if the officer asks for the documents. However, a police officer does not have the right to write and serve a traffic ticket (on a motorist who has not committed a traffic violation) for the purpose of raising money for the municipality.

11. The Village of Bolingbrook and the Bolingbrook Police Department are defendants in this case for the following reasons:
(a) Under the doctrine of *respondeat superior*, employers are vicariously liable for torts committed by employees while acting within the scope of their employment..
(b) Police officer Mitchell was employed by the Bolingbrook Police Department and the Village of Bolingbrook in December 2008, and the caption of the traffic ticket was *Village of Bolingbrook vs. Agwu Nwoke*.
(c) The Village of Bolingbrook and the Bolingbrook Police Department gained financially from the proceeds of any illegal traffic ticket served by a Bolingbrook police officer on a motorist.

C

CAUSES OF ACTION

12. Police officer Mitchell, acted under color of law to violate Nwoke's civilrights pursuant to 42 U.S.C. § 1983. Police officer Mitchell violated Nwoke's 9th Amendment rights with regard to the tort of malicious use of process.

D

JURISDICTION

13. Plaintiff Nwoke brings this action under 42 U.S.C. § 1983. The federal district court has jurisdiction under this statute.

14. Venue is proper in view of the fact that the traffic ticket was served on Nwoke in the Village of Bolingbrook, Illinois.

E

RELIEF REQUESTED

15. Plaintiff Nwoke respectfully requests the Court to award compensatory damages of $750,000.00 to Nwoke against the defendants. Plaintiff Nwoke also requests the Court to award Nwoke any punitive damages against the defendants as the Court may please.

Respectfully submitted,

_____

Agwu Nwoke
522 Alcott Lane
Bolingbrook, IL 60440

Phone: 630-679-1567

Date: May 5, 2009

JUDGMENT OF THE FEDERAL DISTRICT COURT, CHICAGO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Agwu Nwoke

JUDGMENT IN A CIVIL CASE
Case Number: 09 C 2764

v.

Village of Bolingbrook et al

IT IS HEREBY ORDERED AND ADJUDGED that the complaint is dismissed with prejudice. Plaintiff to take nothing. All matters in controversy having been resolved, final judgment of dismissal with prejudice is entered.

Date: 6/4/2009

Michael W. Dobbins, Clerk of Court

United States District Court, Northern District of Illinois

Name of Assigned Judge: Charles P. Kocoras
Case Number: 09 C 2764
Date: 6/4/2009
Case Title: Nwoke vs. Village of Bolingbrook et al

DOCKET ENTRY TEXT
Motion hearing held on 6/4/2009. Plaintiff fails to appear. Defendants' motion to dismiss with prejudice [Doc 8] is granted in its entirety. So ordered. Status hearing set for 6/25/2009 is stricken as moot.

JUDGMENT OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 8, 2009
Decided December 10, 2009

Before

FRANK H. EASTERBROOK, *Chief Judge*
RICHARD D. CUDAHY, *Circuit Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*

No. 09-2494

AGWU NWOKE,
Plaintiff-Appellant,

v.

VILLAGE OF BOLINGBROOK, ILLINOIS,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 09 C 2764

Charles P. Kocoras, *Judge.*

Order

After receiving a traffic ticket for running a red light, Agwu Nwoke filed this suit in federal court under 42 U.S.C. § 1983. He accuses the Village of Bolingbrook of malicious prosecution on the theory that

its police force issues tickets to raise revenue rather than to enforce traffic laws.

The district court dismissed the suit in a court order that does not provide reasons, and thus violates Circuit Rule 50. The suit may have been dismissed for failure to prosecute (Nwoke failed to appear at a scheduled hearing) or on the merits; if the latter, the district court's reasons for thinking the complaint defective were not stated. But there would be no point to remand, because the complaint is incurably deficient. There is no federal-law claim for malicious prosecution, if state law provides remedies for that tort (as Illinois does). See *Newsome v. Mccabe*, 256 F.3d 747 (7th Cir. 2001). Other potential problems with Nwoke's theory need not be explored.

AFFIRMED

FINAL JUDGMENT

December 10, 2009

The judgment of the district court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.